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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,665	12/09/2003	Timothy Carver Wikle	50468/RVW/T522	6365
23363	7590	10/04/2004	EXAMINER	
CHRISTIE, PARKER & HALE, LLP			HAYES, BRET C	
PO BOX 7068			ART UNIT	
PASADENA, CA 91109-7068			PAPER NUMBER	

3644

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/731,665

**Applicant(s)**

WIKLE ET AL.

**Examiner**

Bret C Hayes

**Art Unit**

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-21 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-12 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 09 December 2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The references on the IDS have been considered. However, one – 4,619,069 to Strickland, appears to be irrelevant as a ‘DOUBLE TAILED FISH BAIT’. Perhaps this is only a typographical error that requires attention.

### ***Claim Objections***

2. Claims 4, 6 and 16 are objected to because of the following informalities.
3. Claim 4, line 3, insert --a-- before “wall”.
4. Claims 6 and 16, lines 5 of each, remove “the” before “application”.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. The recitation, “wherein flexible material is an elastomeric material”, is unclear. It would appear that the claim would better depend upon claim 10, which first recites “a flexible material”. As a result, and for the remainder of this action, that is how the examiner has treated the claim.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 4, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,048,215 to Davis.

10. Re – claim 1, Davis discloses the claimed invention including a grip 10 for attachment to a firearm 12, the grip 10 comprising: a housing 26 having an internal storage cavity 28; and a pull tab 30 fixedly attached to the housing 26 and comprising: a body – lower portion of 30, and a stopper – upper portion of 30 – attached to the body, which removably engages a wall that defines an open end of the internal storage cavity to removably cover the internal storage cavity, best seen in Figs. 2, 3, 9 and 10, for example.

11. Re – claim 2, Davis further discloses the stopper removably frictionally engaging the wall that defines the open end of the internal cavity 28.

12. Re – claim 4, Davis further discloses the stopper comprising a protrusion that extends from the body and removably lockingly engages a wall that defines a notch in the housing 26, best seen in Fig. 10, for example.

13. Re – claim 8, Davis does disclose the cavity 28 being a storage chamber, col. 2, line 64 (2:64). However, Davis does not explicitly disclose the cavity 28 being a battery storage chamber storing at least one battery. The recitation of a new intended use for an old product does not make a claim to an old product patentable In re Schreiber, 128 F.3d 1473, 1477, 44

Art Unit: 3644

USPQ2d 1429, 1431 (Fed. Cir. 1997). In this case, the storage chamber disclosed could be used to stow a battery.

14. Re – claim 10, Davis discloses the device including being molded of a high impact plastic, 4:44+, which is known to be a relatively flexible material.

15. Claims 1, 2, 4, 5 and 7 – 9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 2,927,390 to Lewis.

16. Re – claim 1, Lewis discloses the invention as claimed including a grip for attachment to a firearm 10, the grip comprising: a housing 18 having an internal storage cavity; and a pull tab, best seen in Figs. 1 and 2, for example, fixedly attached to the housing 18 and comprising: a body 19, and a stopper 21 attached to the body 19, which removably engages a wall that defines an open end of the internal storage cavity to removably cover the internal storage cavity.

17. Re – claim 2, Lewis further discloses the stopper 21 removably frictionally engaging the wall of the cavity.

18. Re- claim 4, Lewis further discloses the stopper 21 comprising a protrusion extending from the body 19 and removably lockingly engaging a wall that defines a notch in the housing, best seen in Fig. 2, for example.

19. Re – claim 5, Lewis further discloses the pull tab comprising a hinge 20 integrally formed with the body 19.

20. Re – claim 7, Lewis further discloses the pull tab being mounted within an opening in the housing 18 of the grip, such that a handle, furthest portion of 19 opposite 20, is substantially flush with a bottom surface of the housing 18.

Art Unit: 3644

21. Re – claim 8, Lewis does disclose the cavity being a storage chamber, 2:39. However, Lewis does not explicitly disclose the cavity being a battery storage chamber storing at least one battery. The recitation of a new intended use for an old product does not make a claim to an old product patentable In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir.

1997). In this case, the storage chamber disclosed could be used to stow a battery.

22. Re – claim 9, Lewis further discloses the pull tab comprising an arm, best seen in Fig. 2, for example, attached to the body 19 being fixedly attached to a wall in the housing 18.

23. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

24. Claims 1 – 3, 8 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,543,172 B1 to Armstrong.

25. Re – claim 1, Armstrong discloses the claimed invention including a grip 100 for attachment to a firearm, the grip 100 comprising: a housing 14 having an internal storage cavity 14A; and a pull tab 16 fixedly attached to the housing 14 and comprising: a body 163, and a stopper 160 – 162 attached to the body 163, which removably engages a wall that defines an open end of the internal storage cavity 14A to removably cover the internal storage cavity 14.

26. Re – claim 2, Armstrong further discloses the stopper 160 – 162 removably frictionally engaging the wall that defines the open end of the cavity 14A.

Art Unit: 3644

27. Re- claim 3, Armstrong further discloses the stopper 160 – 162 comprising at least one ring 160, 161 about its perimeter, which removably frictionally engages the wall of the cavity 14A to form a water tight seal, 1:31, 1:40, 3:48 and 4:22.

28. Re – claim 8, Armstrong does disclose the cavity 14A being a storage chamber, see Title et al. However, Davis dose not explicitly disclose the cavity 14A being a battery storage chamber storing at least one battery. The recitation of a new intended use for an old product does not make a claim to an old product patentable In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). In this case, the storage chamber disclosed could be used to stow a battery.

29. Re – claim 12, Armstrong further discloses the stopper 160 – 162 comprising an inner ring 160 and an outer ring 161 separated by a channel, best seen in Fig. 5, for example.

***Claim Rejections - 35 USC § 103***

30. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

31. Claims 4, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong.

32. Re – claim 4, Armstrong discloses the invention substantially as claimed as applied above and including the body 163 comprising a protrusion 163A that extends from the body 163 and removably lockingly engages a wall 123 that defines a notch 126 in another housing 12.

However, Armstrong does not disclose the stopper comprising the protrusion as claimed. It

Art Unit: 3644

would have been obvious to one having ordinary skill in the art at the time the invention was made to have the stopper comprise a protrusion as claimed, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. In this case, the motivation to do so would be to more securely attach the body 16 to the housing 14.

33. Re – claim 10, Armstrong discloses the claimed invention except for explicitly stating that the pull tab 16 is formed of a flexible material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a flexible material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. In this case, since plastic is disclosed as being used for the assembly 10, well-known in the art, and a flexible material, it would be an obvious choice as a suitable material.

34. Re – claim 11, as applied to claim 10 above, Armstrong discloses the use of rubber – 28, and O-rings 160, 161, generally consisting of an elastomeric material, being used, it would have been an obvious choice as a suitable material.

***Allowable Subject Matter***

35. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

36. Claims 13 – 21 are allowed.

37. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record neither discloses nor fairly teaches the recited limitations of the claimed



Art Unit: 3644

invention including, but not limited to: (claim 6) a handle having a first end and a free second end and formed of a flexible material such that the second end is movable upon application of external force, but resiliently retracts to a position adjacent to a bottom surface of the body upon removal of the external force; and (claims 13, 20 and 21) a pull tab fixedly attached to a housing and comprising a body, a stopper, a protrusion extending from the body and lockingly engaging a wall defining a notch in the housing, a hinge, and a flexible handle.

38. This statement is not intended to necessarily state all the reasons for allowance or all the details why the claims are allowed and has not been written to specifically or impliedly state that all the reasons for allowance are set forth (MPEP 1302.14).

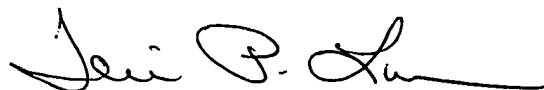
***Conclusion***

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

9/23/04



**TERI P. LUU  
SUPERVISORY PRIMARY EXAMINER**